

INITIAL STATEMENT OF REASONS

This Initial Statement of Reasons has been prepared relative to the proposal of the California New Motor Vehicle Board ("Board") to amend section 551.12 of Article 1, Chapter 2, Division 1, of Title 13 of the California Code of Regulations.

INTRODUCTION

The Board is an agency within the Department of Motor Vehicles ("Department") with oversight provided by the California State Transportation Agency. The Board consists of nine members, seven are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee. (Veh. Code, §§ 3000 and 3001.)

The duties of the Board including the following:

1. To adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing those matters that are specifically committed to its jurisdiction.
2. To hear and determine "appeals" which are filed by applicants for, or holders of, a specified type of occupational license as a result of adverse disciplinary action taken by the Department against the license of such entity. (Veh. Code §3050(b))
3. Consider any matter concerning the activities or practices of any person applying for or holding a specified type of occupational license. These disputes are considered by the Board as a result of the filing of a "petition", which may be done by any person. (Veh. Code §3050(c))
4. To hear and decide "protests" filed by new motor vehicle dealers against their respective franchisors, pursuant to the provisions of the Automotive Franchise Act. (Veh. Code §§ 3050(d), 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, and 3076) These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).
5. The Board is also authorized to hear and decide protests filed by an association against a manufacturer or distributor in regard to violations of Vehicle Code section 11713.3(y), pertaining to Export or Sale-for-Resale Prohibition Policies (Veh. Code § 3085)

The Board is a quasi-judicial administrative agency with the independent authority to resolve disputes between franchised dealers and manufacturers or distributors of new vehicles (includes, in part, cars, motorcycles, recreational vehicles, and all-terrain vehicles).

SECTION 551.12

PURPOSE OF THE REGULATION

The Board proposes to amend Section 551.12 to eliminate the requirement of a declaration of prejudice when filing peremptory challenges with the New Motor Vehicle Board. The amendments also clarify that a peremptory challenge is only authorized to challenge the assignment of an Administrative Law Judge (“ALJ”) for a merits hearing, not for a judge assigned to any law and motion, mandatory settlement conference or rulings on discovery. The Reference is updated to remove Code of Civil Procedure section 2015.5, which pertains to affidavits.

NECESSITY

The regulatory changes in Section 551.12 are necessary to ensure that the litigants that appear before the Board, or would like to appear before the Board, have the information necessary to effectively represent themselves or their clients. The proposed regulatory amendments preclude peremptory challenges of law and motion and settlement conference ALJs in order to expedite and optimize proceedings held before the Board. Other agencies also have similar regulations, including the State Personnel Board and Workers’ Compensation Appeals Board. It is also not necessary (and thus being removed from the regulation) to require a supporting declaration that alleges judicial bias or other grounds for reassignment, as Section 551.1 of Title 13 of the California Code of Regulations provides that any Board ALJ shall voluntarily disqualify himself or herself if they were biased in some manner and could not accord a fair and impartial hearing.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

IMPACT ON JOBS/NEW BUSINESSES:

The Board has determined that the proposed regulation will not have an impact on the creation of new jobs or businesses, the elimination of any jobs or existing businesses, or the expansion of businesses currently doing business in California. The proposed regulation only impacts licensed new motor vehicle dealers, manufacturers, and distributors within the Board’s jurisdiction that file a Protest or Petition with the Board. This includes approximately 1,500 to 2,000 new car, motorcycle, all-terrain vehicle, low-speed vehicle and recreational vehicle dealers and approximately 150-200 manufacturers or distributors. In the last 10 years, there have been on average 45 protests filed per year and a petition has not been filed with the Board since 2015.

BENEFITS OF PROPOSED REGULATION:

Case management is being clarified for litigants that appear before the Board to have the information necessary to effectively represent themselves or their clients. This means the Board will continue to quickly and economically resolve statutorily enumerated disputes between new motor vehicle dealers (franchisees) and their manufacturers or

distributors (franchisors). The Board keeps these types of cases from further clogging our already congested courts. Additionally, the Board issues uniform orders and decisions throughout California thereby allowing franchisors and their dealers to conduct their business in compliance with California law. There are no known benefits to the Board of this proposed regulation to the health and welfare of California residents, worker safety and the state's environment.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board relied on the following documents in drafting and proposing the adoption of the proposed regulation:

- (1) Memorandum dated February 20, 2018, from Timothy M. Corcoran and Robin Parker to the Policy and Procedure Committee regarding the Consideration of Proposed Regulation
- (2) California Code of Regulations, Title 1, section 1034
- (3) California Code of Regulations, Title 2, section 56.2
- (4) California Code of Regulations, Title 8, section 10453

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

Prior to the publication of this notice, the Board considered and adopted the proposed regulation at a noticed General Meeting held on March 13, 2018. Twelve days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulation was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

No comments by the public were received at the March 13, 2018, General Meeting, and no further public discussion was held prior to publication of the notice.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has determined that the proposed regulation will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

There are no associated costs with the proposed regulatory amendments; they clarify case management procedures for franchised new motor vehicle dealers and their franchisors (new motor vehicle manufacturers or distributors) who choose to file a protest or petition with the Board.